Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

DONAN B. MCAULEY,

PETITIONER

V.

DORIS KENNAY OR D/B/A AS
IN TOTIDEM VERBIS, AND
SUPREME COURT OF ILLINOIS

RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS

APPENDIX
PETITION FOR WRIT OF CERTIORARI

DONAN B. MCAULEY
PRO SE
1747 CINDY CT
BETTENDORF IA 52722
563-508-5299

33 pp

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A. STATUTES

1. U.S. Const. Art. VI cl. 2. "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, and any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

2. U.S. Const. Amend. XIV Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. 15 U.S.C. §1602 Definitions and rules of construction:
(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this title [15 USCS §§1601 et. seq.].
(d) The term "person" means a natural person or an organization.
[f) The term "creditor" refers only to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. ...

[g] The term "credit sale" refers to any sale in which the seller is a creditor. ...

4. 15 U.S.C. §1640(e):
"Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, . . ."

B. OPINIONS AND JUDGMENT BELOW

1. Letterhead of
Supreme Court of Illinois
To: Mr. Donan B. McAuley
1747 Cindy CT
Bettendorf IA 52722
Dated April 9, 2002
In re: Doris J. Kennay, respondent v. Donan B. McAuley, petitioner No. 92570

"Today the following order was entered in the captioned case:
"Motion by petitioner, pro se, to recall and stay this Court's mandate. Motion Denied without prejudice to the movant's right to seek relief from the Third District Appellate Court or the United States Supreme Court.
"Order entered by Justice Kilbride."
Very truly yours,
s/ Juleann Hornyak
Clerk of the Supreme Court"

2. State of Illinois
Supreme Court
"On the sixth day of February, 2002, the Supreme Court entered the following judgment:

No. 92570	
Doris J. Kennay,	Petition for Leave
Respondent	to Appeal from
v.	Appellate Court
Donan B. McAuley	Third District

Petitioner 3-99-0951
99SC682ST

"The Court having considered the Petition to appeal as a matter of right or petition for leave to appeal and being fully advised of the premises, the petition to appeal as a matter of right or petition for leave to appeal is DENIED."

"As Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order entered in this case.

(Seal) s/Juleann Hornyak
Clerk, Supreme Court of
the State of Illinois

3. Letterhead:
State of Illinois
Third District Appellate Court
Dated November 22, 2000
To: Mr. Donan B. McAuley
1747 Cindy CT
Bettendorf IA 52722-1800
RE: General No. 3-99-0951
Circuit Court No. 99SC682ST
County of Whiteside
Kennay, Doris v. McAuley, Donan

"The Court has this day entered in the above entitled cause the following order:

"On this court's own motion, pursuant to Supreme Court Rule 375, we find that the instant appeal was frivolous. We therefore remand this cause to the circuit court with instructions that the circuit court conduct a hearing and determine the appellee's reasonable costs and expenses on appeal, including attorney fees. Upon the circuit court's determination of said costs and expenses, the appellant is ordered to immediately reimburse the appellee.

/s/ Gist Fleshman

GIST FLESHMAN, Clerk
Appellate Court Third District"

4. Letterhead:
State of Illinois
Third District Appellate Court
Dated May 17, 2001
To: Mr. Donan B. McAuley
1747 Cindy CT
Bettendorf IA 52722-1800
RE: General No. 3-99-0951
Circuit Court No. 99SC682ST
County of Whiteside
Kennay, Doris v. McAuley, Donan

"The Court has this day entered in the above entitled cause the following order:

"Pursuant to the Illinois Supreme Court's order of April 4, 2001, we hereby vacate our order of November 22, 2000, imposing sanctions on the appellant Donan McAuley. We further order the appellant to show cause, on or before June 7, 2001, why sanctions should not be imposed pursuant to Illinois Supreme Court Rule 375(b) for filing a frivolous appeal. We note that the appellee sets forth the basis for finding this appeal frivolous in Issue VI of her brief.

/s/Gist Fleshman
GIST FLESHMAN, Clerk
Appellate Court Third District"

5. Letterhead:
State of Illinois
Third District Appellate Court
Dated July 17, 2001
To: Mr. Donan B. McAuley
1747 Cindy CT
Bettendorf IA 52722-1800
RE: General No. 3-99-0951
Circuit Court No. 99SC682ST
County of Whiteside

"The Court has this day entered in the above entitled cause the following order:

"This court issued a rule 375(b) rule to show cause, and the appellant filed a response. After careful review, we find that the appellant's appeal was frivolous for the following reasons.

"In his original appellate brief, the appellant raised four constitutional issues. Each of these issues was either waived because it was made for the first time on appeal, clearly without legal merit, or was not properly before us because the appellant lacked standing to raise it.

"The appellant also claimed that the trial court erred by dismissing his counterclaim, which alleged that Kennay failed to comply with the federal Truth in Lending Act (Act) (15 U.S. C. sec 1601 et seq.). We can find no legal or factual basis for the appellant's claim that Kennay's business, court reporting, was a finance agency in a credit transaction and thus governed by the Act. Furthermore, the appellant argues that the trial court erred by failing to sanction Kennay's legal counsel for signing a motion to strike the counterclaim, which was granted. We fail to see why the trial court's failure to sanction Kennay's counsel when it granted the motion to strike was error.

"The appellant also asserted on appeal that he was entitled to extensive litigation in Kennay's small claims case seeking to recover $700 in court reporter fees. The trial court refused to allow the appellant access to documents concerning the relationship between Kennay and an employee, the employee's personnel file, and records pertaining to Kennay's federal and state income tax and insurance coverage. The relevance and materiality of these documents to the contractual issue before the trial court eludes us. Moreover, the disproportionate and needless delay and expense that Kennay would have incurred if the appellant's request had been granted is clearly evident.

"The appellant interposed another specious argument concerning Kennay's operation of her business under a name other than her own. The issue was irrelevant to the outcome of the underlying case. There is simply no legal support for the appellant's apparent defense that an unincorporated employer is barred from recovering damages due to a breach of contract if the employer is operating under a fictitious business name. Like many of the appellant's arguments on appeal, there was no legal support cited for this claim; thus, this issue was also waived.

"Finally, the appellant's argument that the trial judge ignored the evidence and improperly relied on his own personal experience to decide the case appears to have been based on the appellant's gross misinterpretation of a single isolated statement in the court's oral findings. A plain reading of the trial court's ruling shows that it properly based its decision on the evidence and its own credibility determinations.

"Taken as a whole, the appellant's appeal was patently frivolous and brought for improper purposes. We therefore remand this cause to the circuit court with instructions that it conduct a hearing to determine the appellee's reasonable costs and expenses on appeal, including attorney fees, and to enter judgment thereon. Upon the circuit court's entry of judgment, the appellant is hereby ordered to make payment of that sum to the appellee. See 155 Ill.2d R. 375(b).

/s/ Gist Fleshman
GIST FLESHMAN, Clerk
Appellate Court Third District"

6. Letterhead:
State of Illinois
Third District Appellate Court
Dated October 24, 2001
To: Mr. Donan B. McAuley
1747 Cindy CT
Bettendorf IA 52722-1800
RE: General No. 3-99-0951

Circuit Court No. 99SC682ST
County of Whiteside
Kennay, Doris v. McAuley, Donan

"The Court has this day entered in the above entitled cause the following order:

"On the court's own motion, the mandate is recalled. The circuit clerk of Whiteside County is directed to return the mandate to the Third District Appellate Court.

/s/ Gist Fleshman
GIST FLESHMAN, Clerk
Appellate Court Third District"

C. OTHER RELEVANT MATERIAL

1. State of Illinois
In the Circuit Court of 14th Judicial Circuit,
Whiteside County
Doris J. Kennay, individually
and d/b/a In Totidem Verbis No. 99SC682ST
Plaintiff
v.
Donan B. McAuley Answer and Counterclaim
Defendant Filed August16, 1999

"Defendant Donan B. McAuley, pro se, for his Answer to Plaintiff's Scond Amended Complaint states:

"1. Defendant has no knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 1.

"2. Defendant has no knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 2.

"3. Defendant admits that a person identifying herself as Tammy S. Jones did represent herself as a court reporter on January 13, 1998. Defendant has no knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 other than as set forth in the first sentence of this paragraph.

"4. Defendant has no knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 4.

"5. Defendant admits.

"6. Defendant admits that on and prior to January 13, 1998, he was an attorney for Plaintiff Skeeter Enright et. al. v. CGH Medical Center et. al., Case No. 96C50224, United States District Court, Northern District of Illinois, Western Division. Defendant denies each and every other allegation.

"7. Defendant admits that a person identifying herself as Tammy S. Jones did attend a deposition arranged for by counsel for Defendants in Enright et. al. v. CGH Medical Center et. al., 96C50224, United States District Court, Northern District of Illinois, Western Division at the offices of Ward, Murray, Pace & Johnson, attorneys for Defendant CGH Medical Center and other defendants IN 96c50224. Defendant herein has no knowledge sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

"8. Defendant denies.

"9. Defendant denies.

"10. Defendant denies.

"11. Defendant denies.

"One or the other of the following defenses constitutes a complete defense to the second amended complaint.

I.

"For a first defense to second amended complaint, Defendant alleges:

"1. The alleged cause of action set forth in the second amended complaint is based on 225 ILCS §415/1 et. seq., Statutes of the State of Illinois.

"2. The cited statute, especially that part of it designated section entitled §415/28 Payment for Services, is unconstitutional for the individual or collective reasons that a) it is overly broad; b) vague; c) violates the separation of powers between the legislative and judicial branches of the government of the State of Illinois and d) unconstitutionally usurps the power of the Illinois Supreme Court to administer and issue

rules as set forth in Article 16 of the Illinois Constitution for governance of court.

". The Illinois Supreme Court in Supreme Court Rule 208 has provided at time relevant herein that only the party at whose instance the deposition is taken shall pay the charges of the recorder or stenographer for attending and a party at whose request a deposition is transcribed and filed shall pay the charges for transcription and filing.

II.

"For a second defense to the second amended complaint Defendant alleges Plaintiff Doris Kennay, individually, has not complied with the conditions precedent of the statute (225 ILCS §415/1 et. seq.) in that Plaintiff Doris Kennay 1) has not complied with or certified the correctness of any alleged transcription or rendition of services in accordance with 225 ILCS §415(a)(20) and 2) has not complied with 225 ILCS §415/26 to state a valid cause of action under 225 ILCS §415/1 et. seq.

III.

"For a third defense to the second amended complaint Defendant alleges Plaintiff In Totidem Verbis, has not complied with the conditions precedent of the statute (225 ILCS §415/1 et. seq.) in that it 1) has not complied with or certified the correctness of any alleged transcription or rendition of services in accordance with 225 ILCS §415(a)(20); 2) has not complied with 225 ILCS §415/26 to state a valid cause of action under 225 ILCS §415/1 et. seq.; and 3) does not have filed in Ogle County, as it alleges, any assumed name for doing business at 8991 South Prairie Road in City of Ashton, County of Ogle, State of Illinois.

IV.

"For a fourth defense to the second amended complaint Defendant alleges in the alternative to the second and third defense stated above, Defendant is not liable under 225 ILCS §415/1 et. seq. as any payment by Defendant would be contrary to 225 ILCS §415/23(a)(11) in that since to Defendant's knowledge

Plaintiff Doris J. Kennay was not personally present on January 13, 1998 at the deposition set forth in her second amended complaint Plaintiff Kennay by virtue of subpart (11) is prohibited from directly or indirectly receiving from any person any fee, commission, rebate or other form of compensation for professional services she did not actually or personally render. As set forth in said Act, every shorthand reporter shall print his or her name and license number on each transcript reported, 225 ILCS §415/26, and Plaintiff Kennay's number has not been alleged to have been on the transcript claimed to be basis for second amended complaint.

V.

"For a fifth defense to the second amended complaint Defendant alleges Plaintiff Doris Kennay is estopped from claiming one Tammy Jones personally performed the services upon which she can base her claim since she had made a judicial admission in her first amended complaint that it was she who "attended and transcribed the said two depositions at a location with the County of Whiteside, State of Illinois (First Amended Complaint, paragraph 5, page 2.) The first amended complaint then goes on to claim Defendant is liable to Doris Kennay for her personal attendance and production of a transcript document.

VI.

"For a sixth defense to the second amended complaint Defendant alleges Plaintiff Doris Kennay and In Totidem Verbis are estopped from claiming there is a valid debt owed to them by Defendant since neither verified the claimed debt after claiming the existence of said debt under 15 U.S.C. §1601 et. seq. Prior to January 18, 1999 Plaintiff Kennay caused and authorized Mr. Robert G. Cooper II of Boca Raton, Florida, a collection agency, to write a letter dated January 18, 1999 to Defendant claiming a debt owed to In Totidem Verbis Crt Rptr, but not claimed to be owed to Plaintiff Doris Kennay as an individual court reporter. In accord with the provisions of 15 U.S.C. §1601 et. seq. Defendant by letter dated

January 23, 1999 to the same said Mr. Cooper disputed the debt owed existed. Affiant received no verification to validate the claimed debt. Said letters referenced in this Defense VI are in the record as attachments to Defendant's Motion to Dismiss filed April 19, 1999 in the instant action and are incorporated herein by reference.

VII.

"For a seventh defense to the second amended complaint, in the alternative, should there be found, any contract found in favor of Plaintiff(s) is void because not in compliance with the disclosure requirements of 15 U.S.C. §1601 et. seq.

"Consequently, Defendant DONAN B. McAULEY prays for judgment dismissing the second amended complaint and for his costs of this action.

DONAN B. McAULEY, Defendant
/s/ Donan B. McAuley

COUNTERCLAIM

"Now comes DEFENDANT DONAN B. MCAULEY, who does allege the following:

"1. Plaintiff Doris Kennay is a person defined in 15 U.S.C. §1602 (d).

"2. Plaintiff Doris Kennay is a creditor as defined in 15 U.S.C. §1602(f).

"3. Plaintiff Doris Kennay prior to her asserting a claim that a personal debt was owed to her by Defendant Donan B. McAuley as alleged in 99SC682ST did not disclose to Defendant Donan B. McAuley in writing or otherwise prior to the claimed effective date of the transaction all the charges for the claimed debt, including but not limited to, "late charges" which were allegedly to apply to late charge to all accounts unpaid after 30 days at a rate of 1.5% per month or $2.00 minimum.

"4. Plaintiff Doris Kennay sought to impose said "late charge" on Defendant Donan B. McAuley which meets the definition of a "finance charge" as set forth in 15 U.S.C. §1601 et. seq., including but not limited to 15 U.S.C. §1605(a)(1) and (2).

"5. Plaintiff Doris Kennay was and is asserting a "credit sale" as said term is defined in 15 U.S.C. §1602(g).
"6. Plaintiff Doris Kennay has at relevant times offered those to whom she claims a debt is due the opportunity to pay in installments which may equal or exceed four or more installments.
"7. Plaintiff Doris Kennay has a clear and consistent practice of attempting to assess and collect a finance charge as designated a "late charge" on her invoices with no disclosure to consumer that the charge was interest calculated at a minimum rate of 18 per cent per annum.
"8. Plaintiff Doris Kennay at no relevant time obtained the agreement of Defendant Donan B. McAuley to the assessment of any monetary sum, fee, finance charge, late fee, time price differential, or any amount payable under a system of additional charges in conformance with law.
"9. The conduct of Plaintiff Doris Kennay has been and is contrary to rights afforded Defendant under 15 U.S.C. §1601 et. seq.
"WHEREFORE, Defendant DONAN B. MCAULEY prays for a judgment in his favor that any contract found by the court to be in existence between Plaintiff Doris Kennay and Defendant is null and void in its entirety or voidable at option of Defendant and that Defendant be awarded damages in minimum of $1,000 statutory penalty as provided by 15 U.S.C. §1601 et. seq. plus attorney fees and costs incurred.

DONAN B. McAULEY, Defendant
/s/ Donan B. McAuley"
(Certificate of Service, redacted)

2. State of Illinois
In the Circuit Court of the 14th Judicial Circuit,
Whiteside County
Doris J. Kennay, individually
and d/b/a In Totidem Verbis No. 99SC682ST
Plaintiff
v.

Donan B. McAuley
Defendant
Defendant's Request for Production of Documents
Filed August 16, 1999

"Defendant DONAN B. MCAULEY, pro se, pursuant to Order of Court under Supreme Court Rule 287, requests Plaintiff DORIS J KENNAY individually and d/b/a IN TOTIDEM VERBIS produce for inspection and copying by Defendant the following documents at the offices of Donan B. McAuley, Suite 415, 1800 3rd Avenue, Rock Island, Illinois, within 30 days of service of this document, or on such earlier date as may be agreed upon. The instructions and definitions to be utilized in complying with this request are:

INTRODUCTORY STATEMENTS AND DEFINITIONS

"A. The word "identify" when used in Production of Document request with respect to an individual means to state the name, present business affiliation, business address and home address of the person.

"B. The word "identify" when used with respect to an entity, organization or partnership means to state the name of the entity, organization, or thing, the address thereof, the business thereof, and, if a partnership, each partner is to be identified.

"C. The word "identify" when used in Request for Production of Document pertaining to a conversation or other verbal communication means any document which would include without limitation:

"a. the date;

"b. the persons present;

"c. the persons speaking;

"d. the length of time engaged in said conversation;

"e. the place or location of the conversation;

"f. and if any written document was made concerning the fact of or contents of the conversation.

"D. This Request for Document Production is intended to be as inclusive as possible, and the inclusive reading should be used in interpreting the Request rather than the exclusive. Any reference to "Plaintiff" shall include

any person or entity set forth as a Plaintiff in 99 SC 682ST.

"E. Whenever appropriate in this Request for Document Production, the singular form or word shall be interpreted as plural.

"F. The word "and" as well as the word "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Request for Document Production any information which might otherwise be construed to be outside its scope.

"G. With respect to any answer, communication, or document which the Defendant (sic) seeks to withhold on claim of privilege, provide a statement signed by the attorney representing the Plaintiff setting forth as to each such answer, communication, or document:

"a. brief description of the nature and subject of the document or communication;

"b. the statute, rule, or decision which is claimed to give rise to the privilege.

"H. When the word "you" is used in these Interrogatories it refers to the person to whom this Production of Document Request is directed which is indicated by the name following the word "TO" immediately following the caption and includes without limitation any officer, agent or supervisor of any named entity or corporation, its attorneys, investigators, or experts.

"I. "Person" includes, without limitation, a natural person or persons, corporations, association, partnership, governmental agency, and any other entity of every nature and type.

"J. If any document responsive to any request has been lost, mutilated, or destroyed, so state and identify each such document, and state to which request(s) the document would have been responsive.

"K. If there are no documents in your possession, custody or control which are responsive to a particular request, so state and identify such request.

"L. Any document responsive to any request should be identified as being responsive to the specific request

involved. If the same document is responsive to more than one request, all requests to which it is responsive should be identified.

"M. The time period covered by this Request is January 1, 1998 through the present, unless otherwise specified.

"N. All requests should be considered continuing in nature as governed by the Supreme Court Rules, State of Illinois.

"REQUEST NO. 1

All documents that identify the nature of any relationship between you (Plaintiff) and the person identified as Tammy Jones in the Second Amended Complaint including but not limited to:

1. W-2 tax and income reporting forms
2. 1099 tax and income reporting forms (or equivalent)
3. Documents showing any U.S. currency or monetary equivalents such as checks, drafts, vouchers, etc. being given by Plaintiff to said Tammy Jones or the receipt of any U.S. currency or monetary equivalents. Payment in kind is included as a US currency equivalent.

REQUEST NO. 2

The employee personnel file of Tammy Jones as the person identified in Plaintiff's Second Amended Complaint you (as defined above) kept.

REQUEST NO. 3

All invoices or statements or documents of any kind Plaintiff sent to persons or organizations with whom existed a Plaintiff claim for stenographic reporting and Plaintiff referenced there was due to Plaintiff any "late charge", finance charge, interest, time delay payment or charge of any kind not incurred on the date the stenographic reporting services were rendered.

REQUEST NO. 4

All federal and state income tax documents, including supporting schedules, wherein you (Plaintiff) claimed any income or expense attributed to stenographic services personally performed by the person identified

as Tammy Jones in Plaintiff's Second Amended Complaint.

REQUEST NO. 5

All documents from January 1, 1997 to the present either sent to you or received by you (as defined above) from any attorney or other person on behalf of any attorney at Ward, Murray, Pace and Johnson, Sterling, Illinois, related to any deposition claimed by Plaintiff in her Second Amended Complaint to be the basis for the liability of Defendant to Plaintiff.

REQUEST NO. 6

All documents upon which you as Plaintiff relies on to support Plaintiff's claim of reasonable stenographic fees and costs.

REQUEST NO. 7

All documents in possession and custody of you (Plaintiff) related to your allegations as set forth in Paragraphs 1,2, 3 and 4 of your Second Amended Complaint.

REQUEST NO. 8

All documents in possession and custody of Plaintiff that relate to the claimed "agency" existing between Plaintiff and the person identified as Tammy Jones in the Second Amended Complaint.

REQUEST NO. 9

All documents in your (Plaintiff) possession and custody identifying any insurance coverage paid for by you (Plaintiff) relating to the person identified as Tammy Jones in the Second Amended Complaint to include, but not be limited to, worker compensation coverage, unemployment insurance, social security (including Medicare) payroll deductions (FICA), professional liability coverage, omissions and acts coverage, motor vehicle coverage or riders or any coverage where the person identified as Tammy Jones in the Second Amended Complaint was covered as an insured.

DEFENDANT DONAN B. MCAULEY

/s/ Donan B. McAuley"

3. State of Illinois
In the Circuit Court of the 14th Judicial Circuit,
Whiteside County
Doris J. Kennay, individually
and d/b/a In Totidem Verbis No. 99SC682ST
Plaintiff
v.
Donan B. McAuley
Defendant
Relevant entries in Court Docket
"5/18/99 - 2. Defts. 2-615 motion allowed.
"7/12/99 – (Deft) 2-615 Mt allowed. Deft has shown proof that someone other than Plaintiff provided Ct Reporting services & proof does not comply w/allegations of complaint. Nor is there allegation that "Tammy Jones" is Employee of Plaintiff lst Am complaint stricken.
"7/26/99 - Second Amended Complaint filed.
"8/16/99 - Defendant motion for leave to propound request for production of documents filed. Answer and counterclaim filed. Notice pursuant to Rule 19 of defendant claim of statue's unconstitutionality filed. Defendant's request for production of Documents is denied.
"9/21/99 – Motion to Dismiss Counterclaim filed.
"9/27/99 – Plaintiff Mtn to Strike Aff Def & Dismiss Counterclaim allowed.
"10/22/99 – Plaintiffs motion to quash subpoena as is related to documents to be provided is allowed."

4. Letterhead of Adams Cooper and Marks
Dated Fri Jan 22 1999 to:
"In Totidem Verbis Crt Rptr 14230 Page 1
8991 South Prairie Road
Ashton IL 61006
Att; Ms. Doris Kennay
Phone 815/453-2260 Fax: 815/453-2260
We augment our formal acknowledgement of the account(s) listed below.

Collection efforts have already begun with the highest possible degree of efficiency.

If payment is made directly to you, please notify the undersigned immediately.

Thank you for selecting our firm to satisfy your financial needs and we will do everything possible to continue to earn your trust.

NAME	FILE #
McAuley Esq., Donan B.	89630-85437
AMOUNT	ASSIGNED
762.01	1/18/99
NUMBER ASSIGNED	AMOUNT ASSIGNED
1	762.01

Adams Cooper & Marks
By /s/ Marvin Popech"

5. Payroll Worksheet maintained by Doris Kennay
Reporter s/Tammy
"1/3/98 Enright $149.60
1/3/98 Proulx $141.05
* * * *
Less copy on (unreadable) taken 10/7/97. Attorney never paid so copy not sent. -130.40"

6. Personal Bank Check
Account of Doris Kennay #2787 at Amcore Bank
"Payable to Tammy Jones $1382.67 s/Doris J. Kennay dated 2/6/98." Said total matches #5 worksheet above.

7. United States District Court for
Southern District of Iowa, Davenport Division
"Donan B. McAuley
Plaintiff
v.
Goodman et. al.
Defendants

No. 3-99-CV-10151

Filed April 11, 2001

"Defendants Statement of Interest

"As required by LR 3.2 and LR 81.1©, (d), and (e), Adams, Cooper & Marks, a business entity, defendant in this case, provides the following information to the court:

"(a) The following are the names of all associations, firms, partnerships, corporations, and other artificial entities that either are related to the defendant as a parent, subsidiary, or otherwise, or have a direct or indirect pecuniary interest in the defendant's outcome in the case:

"Adams, Cooper & Marks, Inc., a Minnesota corporation. I.C. System, Inc., a Minnesota corporation. Adams, Cooper & Marks, Inc. has an assumed name filing in Minnesota and Florida to do business as Adams, Cooper & Marks.

"(b) With respect to each entity named in response to (a), the following describes its connection to or interest in the litigation, or both:

"Adams, Cooper & Marks, Inc. is a Minnesota corporation owned entirely by I.C. System, Inc., a Minnesota corporation.

/s/Arthur L Buzzell
Arthur L. Buzzell, attorney for
defendant Adams, Cooper & Marks"

8. State of Illinois
In the Circuit Court of the 14th Judicial Circuit
Whiteside County
Doris J. Kennay, individually
and d/b/a In Totidem Verbis No. 99SC682ST
Plaintiff
v.
Donan B. McAuley
Defendant

Transcript of Trial Testimony on October 25, 1999
"at Tr. page 81 –

"Q. On January 13th of 1998, was – or did In Totidem Verbis have an assumed business name filing with Ogle

County stating that you were in business at 8991 South Prairie Road in Ashton, Illinois?

"MR. MERTES: Objection. Irrelevant.

"THE COURT: Sustained.

"MR MCAULEY: Your Honor, I believe it is relevant. it goes to credibility.

"THE COURT: Sustained, Mr. McAuley. Sustained. We've talked about this before, Mr. McAuley. The record should reflect that Mr. McAuley has raised this issue with regard to the assumed business name, and the court has made rulings – pretrial rulings on this matter previously. That's the reason why it's irrelevant and the reason for the court's ruling.

"MR MCAULEY: Your Honor, I would like to make an offer of proof that it's also relevant to the Illinois Court Reporter Act 225 Illinois 415 – and I understand it's arguing, but I think it's relevant to that statute brought up by the witness.

"THE COURT: Thank you, Mr. McAuley. The request for offer of proof is denied."

9. State of Illinois
In the Circuit Court of the 14th Judicial Circuit
Whiteside County
Doris J. Kennay, individually
and d/b/a In Totidem Verbis No. 99SC682ST
Plaintiff
v.
Donan B. McAuley
Defendant

Transcript of Trial Testimony on October 25, 1999

"At Tr. page 182 –

"Another judge, specifically Judge DePorter, made a ruling with regard to Mr. McAuley's request for production. That ruling was denied. Many of the things that were requested in that request for production found themselves in subpoena duces tecum. Rule 237 provides that those items previously

discovered could be requested in a Rule 237 subpoena duces tecum. That fact that there was no such prior discovery allowed specifically and a specific request for production shows up in a request – in a subpoena duces tecum is, to this court, a clear violation of Rule 237."

10. State of Illinois
In the Circuit Court of the 14th Judicial Circuit
Whiteside County
Doris J. Kennay, individually
and d/b/a In Totidem Verbis No. 99SC682ST
Plaintiff
v.
Donan B. McAuley
Defendant
Transcript of Trial Testimony on October 25, 1999
"At Tr. page 87-88 –
"Q. (to Doris Kennay) Did you hire Adams, Cooper & Marks to collect from Mr. McAuley for the debt you claim he's liable for for the January 13, 1998, depositions?
"MR. MERTES: Objection. Irrelevant.
"THE COURT: Mr. McAuley, who is the firm that you're referring to?
"MR. MCAULEY: It's a debt collection agency that was hired by Ms. Kennay. She testified about collection efforts. I'm just calling upon her response –
"THE COURT: That would be the Boca Raton firm?
"MR MCAULEY: Yes.
"THE COURT: Is that correct?
"MR MCAULEY: Yes.
"THE COURT: objection is sustained. The court has previously dealt with that issue in regard to that firm in another context, and I believe that, at this point in time, it is irrelevant."

11. State of Illinois
Appellate Court Third District
Doris J. Kennay, individually

and d/b/a In Totidem Verbis No. 3-99-0951
Plaintiff-Appellee
v.
Donan B. McAuley
Defendant-Appellant
Appellant Brief Filed March 6, 2000
Pages 17 to 18

"B. Sanctions.

"The trial court abused its discretion in denying sanctions pursuant to Rule 137 on September 27, 1999 (C-3). Supreme Court Rule 137 in pertinent part states:

> "The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonably inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."

"Kennay's counsel could not pretend the law favors his position and force the court or opposing party to determine that established law is against the advocate. *Mars Steel Corp. v. Continental Bank N.A., 880 F.2d 928 (7th Cir. 1989).*

"Kennay's counsel position evidenced he had not even read the applicable statute referenced in the counterclaim, 15 U.S.C.§1601 at §1640(e). (C-143). (case citation omitted).

"The trial court just dismissed this public, consistent, statutory and case authority directly and convincingly disputing Kennay counsel's bald assertion of no court jurisdiction.

"With such overwhelming evidence it could not in any fashion be held that Kennay's counsel had made any inquiry before he signed such an erroneous motion. The conduct of Kennay's counsel is what Rule 137 is to prevent.

"There is no Kennay counsel affidavit or other evidence that he made any inquiry before asserting an unsupported lack of jurisdiction by the trial court. There was not even argument to modify existing clear statutory language and supporting case authority.

"For the trial court to deny the motion would have required there to be a reasonable basis for Kennay's stated no jurisdiction position. There exists no evidence for this Appellate Court to uphold the trial court's order of dismissal or denial of sanctions for Kennay counsel."

12. In Totidem Verbis Letterhead
Invoice 98-TJ- &9 Date 1-21-98
"Bill to: Attorney Donan B. McAuley (address)
I.D. Number Day Taken
36-3230326 1/13/98
RE: Enright v CGH Medical Center .
(listing of specific charges redacted)
6/1/98 thru 1/4/99 Late Charges $65.11
Late charge applied to all amounts unpaid after 30 days at a rate of 1.50% per month or $2.00 minimum.
Total due $762.01"

13. Affidavit of Defendant McAuley
Dated September 27, 1999
Filed September 27, 1999
"State of Iowa
County of Scott
"This is to certify that the attached one page document identified in page heading as Ch41 Consumer Credit, 15 §1640, pages 664 (right column) and 665 is a true and accurate copy of the identical page(s) contained in the United States Code Annotated volume containing the Federal Truth in Lending Law, 15 §1601 et seq., as present and maintained in the Rock Island County Law Library on September 16, 1999.

/s/ Donan B. McAuley
Notary Public

My commission expires Feb 14, 2000"
(Attached page from referenced US Code Annotated not included as hard to reproduce, but contained listing of cases in state court where state court jurisdiction acknowledged.)

14. State of Illinois
In the Circuit Court of the 14th Judicial Circuit
Whiteside County
Doris J. Kennay, individually
and d/b/a In Totidem Verbis No. 99SC682ST
Plaintiff
v.
Donan B. McAuley
Defendant
Written Defendant Argument Filed and Accepted
By Trial Court at Trial on 10/25/99
"In Totidem Verbis, as an entity of sole proprietorship, has no standing to bring any lawsuit under Illinois Certified Shorthand Reporters Act of 1984 (hereinafter "Act").
"Under the Act, "[n]o person may practice shorthand reporting on a temporary or permanent basis in this State without being certified under this Act." §415/3.
"And, "No person shall, after the effective date of this Act, begin to practice in this State or hold himself out as being able to practice shorthand reporting unless he is certified in accordance with the provisions of this Act." §415/12.
"The Act denies compensation to uncertified reporters and in explicit language states "No action or suit shall be instituted, nor recovery therein be had, in any court of this State by any person for compensation for any act done or service rendered, the doing or rendering of which is prohibited under the provisions of this Act to other than certified shorthand reporters." §415/13.
"The key word used consistently throughout the Act and consistent with all references is that all Act

references to "person" means a human being, not a business entity.

"This construction is supported throughout the Act, especially in the following sections:

"*§415/4(5) definition of shorthand reporter means a person technically qualified and certified. No provision of the Act provides that a business entity is certifiable as an entity.

"*In fact, provisions of the Act make it impossible for an entity to meet the conditions of qualification as set forth in §415/11. No entity can be convicted of a felony, graduate school, or successfully complete an examination. Only a human being can meet the Act's conditions of qualification and thus be certified.

"*In Totidem Verbis is not a certificate holder nor registered as required by §415/18.

"*The only Act reference to a business entity is limited in §415/20 where a certificate holder is not restricted from forming a professional service corporation. However, the Act does not grant any such professional service corporation any right to bring an action in its own right.

"*A business entity is incapable of meeting the continuing education requirements of §415/27 or the competency requirements of §415/9.

"That a business is not recognized under the Act as a person and is incapable of holding a certificate the business entity thus does not in its own right have standing to bring a lawsuit under the Act because a business entity is not a "certified shorthand reporter" as defined in the Act and as not a "certified shorthand reporter" it is barred by §415/13 from bringing any action or suit. Therefore, as not authorized to bring an action or suit under the Act, it has no authority or standing to invoke §415/28 relating to payment for services since that provision applies only to a natural person who is certified as a shorthand reporter under the Illinois Certified Shorthand Reporters Act of 1984, 225 ILCS 415/1 et. seq.

"Doris Kennay as an Individual Has No Standing to Invoke the Illinois Certified Shorthand Reporters Act of 1984 other than for Services Personally Performed.

"Doris Kennay, assumed to have a valid certificate in shorthand reporting on or about January 13, 1998, under the Illinois Certified Shorthand Reporters Act of 1984 (hereinafter "Act") has no standing under the Act to be personally compensated for shorthand reporting services not personally performed.

"For shorthand services to be performed under the Act requires the reporting by the use of any system of manual or mechanical shorthand writing. §415/4(4). this is the production of stenographic notes which are defined under the Act in §415/4(6) as "Stenographic notes" means the original notes by manual or mechanical shorthand or shorthand writing taken by a shorthand reporter of a proceeding while in attendance at such proceeding for the purpose of reporting the same."

"This requirement of personal attendance is supported by the requirement in §415/26 that "Every shorthand reporter shall print his or her name and license or restricted license number on each transcript reported."

"If the person such as Doris Kennay who did not personally take the stenographic notes of the proceeding and did not fulfill the requirements of signature set forth in §415/26, that person is violating the provisions of the Act when attempting to claim compensation for services not personally performed. Such a claim is a prohibited act under the certified shorthand reporters Act and the Act provides in §415/13 that no action or suit shall be instituted nor recovery of compensation had for any services unless in compliance with the Act. The rationale is simple. If there is a lack of compliance with the provisions of the Act, no action or suit may be maintained by a person not in full and complete

compliance with the Act. To hold otherwise would defeat the public policy said by the legislature to justify the Act."

15. United States District Court
For the Southern District of Iowa
Davenport Division
Donan B. McAuley,
Plaintiff
v. No. 3-99-CV-10151
Goodman et. al.
Defendants. Filed November 22, 2000

Answer of Doris J. Kennay, individually,
d/b/a In Totidem Verbis

"Now comes Doris Kennay, individually, or d/b/a In Totidem Verbis, by her attorney Douglas C. Scovil of Ruud, Scovil & Marsh, and for her Response to the Complaint filed herein respectfully states and alleges as follows:

Count I

"Makes no answer to the same for the reason that no relief is sought against defendant, Kennay.

Count II

"Makes no answer for the reason no relief is sought against defendant, Kennay.

Count III

"1. Admits the allegations contained therein.

"2. Admits that a civil lawsuit was filed against plaintiff in Whiteside County, Illinois, in the Circuit Court of the Fourteenth Judicial Circuit, in a case entitled 99 SC 682 St, handled through the Sterling Division of the Whiteside County Court. The suit was filed therein for the reason that the subject matter of the aforementioned lawsuit related to depositions that were taken in Whiteside County. After filing the aforementioned lawsuit in Whiteside County, defendant Kennay delivered the papers to Stewart & Associates Inc. who does business at 302 1st Avenue, City of Sterling, County of Whiteside and State of Illinois. It is

unknown to plaintiff how services was effectuated upon defendant, but the return of service will speak for itself.

"3. Admits that counsel, in the First Amended Complaint, alleged that she personally attended and rendered services. However, her attorney cleaned that matter up in the Second Amended Complaint that was filed, in that it alleged that Tammy S. Jones did in fact personally perform the services (court reporting) for which recovery was sought from Mr. McAuley; and that Tammy S. Jones was an employee, servant, and agent of her principal and employer, Doris J. Kennay, individually, and also d/b/a In Totidem Verbis. Defendant does not have sufficient information to admit or deny the allegation as to what defendant's counsel represented to the Court on August 16, 1999.

"4. Denies the allegations contained therein and affirmatively states that trial was held on the case in Whiteside County on or about October 26, 1999 and, in the complaint that went to trial, no allegations were made seeking to recover finance charges.

"5. Denies the allegations contained therein and affirmatively states that the only contact defendant had with Adams, Cooper & Marks and Goodman began January 15, 1999 and ended March 10, 1999.

"6. Denies the allegations contained therein due to lack of information as the allegation is too general and is not specific enough to be able to address any specific disclosure that was supposedly due to have been made that was not made. Therefore, due to lack of specificity, denies the general allegation making reference to an entire statutory scheme.

"7. Denies the allegations contained therein.

"8. Denies the allegations contained therein.

"9. Denies the allegations contained therein and affirmatively states that Tammy S. Jones was an employee and was paid a salary for the work that was done by defendant, Kennay.

"10. Denies the allegations contained therein and, to the extent that any portion of this allegation relates to any allegations made in a law suit in Whiteside County,

states that said allegations were made upon advice of counsel as defendant, Kennay, hired an attorney to represent her in connection with said matters.

"11. Denies the allegations contained therein.

"12. Denies the allegations contained therein and affirmatively states that the small claims suit in Whiteside County took place in said county because that is where the depositions that were the subject of the law suit were taken by Tammy S. Jones, an employee of Doris Kennay, individually, and d/b/a In Totidem Verbis, denies the remainder of the allegations contained therein.

"13. Admits that the invoices forwarded to Adams, Cooper, Marks and Goodman from 1-15-99 to 3-10-99 contained finance charges in the total; denies the remainder of the allegations contained therein.

"14. Denies that plaintiff is entitled to recover any damages, fees, or costs, expungement of records, or other relief as sought in Paragraph 14.

Affirmative Defenses

"1. The Count that was the subject of collection was not for personal, family, or household purposes; therefore the Fair Debt Collection Practices Act does not apply to the same.

"2. This Court does not have subject matter jurisdiction.

"3. This Court does not have personal jurisdiction over defendant, Kennay.

"4. If this matter remains with this Court, this Court should stay these proceedings pending the outcome of the appeal from the Circuit Court of the Fourteenth Judicial Circuit, Whiteside County, Sterling Division, in Cause No. 99-SC632ST (sic), which was appealed to the Appellate Court of the Third Judicial District in and for the state of Illinois.

"Defendant prays that this Court award her reasonable attorneys fees and costs pursuant to 15 U.S.C. 1692K(3), or other applicable statutory provisions which may apply after hearing the evidence herein and

allowing any amendments to conform the pleadings to the proof at the time of trial.

DORIS KENNAY, One of Defendants
By /s/ Douglas C. Scovil

(Statement of Service of Answer redacted)